

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 SP-02 USIA-15 AID-05 EB-08 NSC-05
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R 141539Z FEB 77

FM AMEMBASSY CARACAS

TO SECSTATE WASHDC 6586

INFO AMEMBASSY QUITO

AMEMBASSY LIMA

AMEMBASSY LA PAZ

AMEMBASSY SANTIAGO

AMEMBASSY BOGOTA

UNCLAS CARACAS 1535

E.O. 11652: N/A

TAGS: EINV, VE

SUBJ: PROVISIONS OF DECREE 62 MODIFIED

1. SUMMARY: PRESIDENTIAL DECREE DEROGATING DECREE 62 (WHICH IMPLEMENTED PARTS OF DECISION 24 OF ANDEAN PACT) PUBLISHED FEBRUARY 11. NEW PROVISIONS PERMIT EXTENSION OF DEADLINE FOR FOREIGN FIRMS ENGAGED IN RESERVED ACTIVITIES TO TRANSFORM INTO NATIONAL COMPANIES. CHANGES ALSO PERMIT FOREIGN FIRMS TO ENGAGE IN MARKETING ACTIVITIES UNDER CERTAIN CIRCUMSTANCES AND LIBERALIZE RESTRICTION ON ACTIVITIES FOREIGN CONSULTING/ ENGINEERING FIRMS. WE ARE POUCHING COMPLETE TEXT TO DEPARTMENT UNDER COVER OF AIRGRAM. END SUMMARY.

2. ACCORDING TO TEXT ARTICLE 1 OF NEW DECREE, FOLLOWING SECTORS RESERVED FOR NATIONAL COMPANIES EFFECTIVE FEBRUARY 8, 1977:

A. SUCH PUBLIC SERVICES AS TELEPHONE, TELECOMMUNICATIONS, POSTAL SERVICE, POTABLE WATER AND SEWERAGE, GENERATION,
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DISTRIBUTION AND SALE OF ELECTRIC POWER, SANITARY SERVICES, SECURITY SERVICES, CLEALING.

B. TELEVISION, RADIO, NEWSPAPERS, AND MAGAZINES IN SPANISH, PUBLICITY, INTERNAL TRANSPORTATION OF GOODS AND PEOPLE. SIEX IS EMPOWERED TO MAKE EXCEPTIONS IN THE CASE OF PUBLICATIONS IN SPANISH HAVING A CULTURAL OR SCIENTIFIC NATURE.

C. INTERNAL MARKETING OF GOODS. FOREIGN FIRMS DOMICILED IN THE COUNTRY ON THE EFFECTIVE DATE OF THIS DECREE WHICH ARE ENGAGED IN THIS ACTIVITY MAY BE PERMITTED TO CONTINUE THEIR MARKETING ACTIVITIES EITHER DIRECTLY OR THROUGH COMPANIES THEY CONTROL IF THEY DEAL IN GOODS THEY PRODUCE IN THIS COUNTRY. COMMENT: THIS IS A REVISED, CLARIFIED VERSION OF ARTICLE 16 OF DECREE 62.

D. PROFESSIONAL SERVICES SUCH AS CONSULTING OR ADVISORY SERVICES, DESIGN AND ANALYSIS OF PROJECTS AND REALIZATION OF GENERAL STUDIES IN AREAS WHICH REQUIRE THE PARTICIPATION OF PROFESSIONALS WHOSE ACTIVITIES ARE REGULATED BY LAW. HOWEVER, SIEX (SUPERINTENDENCIA DE INVERSIONES EXTRANJERAS) MAY EXEMPT COMPANIES WHICH CONTRIBUTE TECHNOLOGY NECESSARY TO THE DEVELOPMENT OF THE COUNTRY, WHEN FOREIGN PARTICIPATION IN THE COMPANY DOES NOT EXCEED 49PERCENT. COMMENT: THIS SECOND SENTENCE REPRESENTS A LIBERALIZATION IN THAT FOREIGN OWNERSHIP OF CONSULTING FIRMS CAN NOW BE AS HIGH AS 49PERCENT INSTEAD OF ONLY 20PERCENT.

3. COMPANIES WHICH MARKET IN VENEZUELA CAPITAL GOODS AND CONSUMER DURABLES WHERE SUCH GOODS ARE NOT MADE IN THE COUNTRY OR WHERE THE IMPORT OF SUCH GOODS IS NOT SUBJECT TO THE POLICY OF INDUSTRIAL PROTECTION ARE ALSO EXCEPTED FROM THE ABOVE PROVISIONS, BUT ONLY IF THE FOREIGN COMPANIES OFFER TECHNICAL SERVICES NECESSARY TO THE USE AND MAINTENANCE OF THE GOODS IN QUESTION. TO PROVIDE THESE SERVICES, THE FOREIGN FIRMS IN QUESTION IS OBLIGED TO EMPLOY AND TRAIN VENEZUELAN TECHNICIANS, SUBJECT TO REVIEW BY SIEX.

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4. SIEX ALSO GIVEN DISCRETIONARY POWER TO EXEMPT THOSE COMPANIES WHICH WERE PREVIOUSLY OBLIGATED TO PRODUCE BEFORE DECEMBER 1, 1977, GOODS INTENDED FOR INTERNAL DISTRIBUTION. THIS EXEMPTION MAY NOT EXCEED THREE YEARS. BY DEFINITION, SUCH COMPANIES' TOTAL PRODUCTION IN THIS COUNTRY MUST BE EQUAL TO OR EXCEED 51 PERCENT OF ITS TOTAL PRODUCTION, AND HAVE AN ADDED VALUE OF NOT LESS THAN THIRTY PERCENT. THE PERCENTAGE OF PRODUCTION MUST BE REFLECTED PROPORTIONALLY IN BOTH GROSS SALES AND TOTAL INCOME OF THE COMPANIES.

5. IN ADDITION, SIEX MAY EXEMPT COMPANIES WHICH ARE ENGAGED IN THE MARKETING OF GOODS PRODUCED IN THIS COUNTRY WHERE THE COMPANY HAS PROVIDED THE NECESSARY TECHNOLOGY, EITHER DIRECTLY OR THROUGH SUBSIDIARIES TO LOCAL ENTREPRENEURS. THE FOREIGN COMPANY IN QUESTION MUST HAVE BEEN IN EXISTENCE ON DECEMBER 31, 1973.

6. FOREIGN COMPANIES CURRENTLY OPERATING IN THOSE SECTORS

LISTED IN PARAGRAPH 2 ABOVE MUST TRANSFORM THEMSELVES INTO NATIONAL COMPANIES (WITH FOREIGN EQUITY HOLDINGS OF 20PERCENT OR LESS) BY DECEMBER 30, 1977. SIEX MAY DETERMINE WHAT STEPS WILL BE TAKEN BY INDIVIDUAL COMPANIES TO MEET THIS REQUIREMENT. SIEX MAY ALSO EXTEND THIS DEADLINE FOR ONE ADDITIONAL YEAR IN CASES WHERE IT CAN BE DEMONSTRATED THAT COMPLIANCE WAS NOT POSSIBLE FOR REASONS BEYOND THE CONTROL OF THE COMPANY IN QUESTION, OR WHEN SPECIAL CIRCUMSTANCES JUSTIFY SUCH A DECISION BY SIEX.

7. INSURANCE, COMMERCIAL BANKS AND OTHER FINANCIAL INSTITUTIONS WILL REMAIN SUBJECT TO SPECIAL LAWS ALREADY IN EXISTENCE. THE SUPERINTENDENCIAS OF BANKING AND INSURANCE ARE DESIGNATED AS THE COMPETENT ORGANIZATIONS DEALING WITH QUESTIONS OF FOREIGN INVESTMENT IN THIS AREAS. THE DECREE ALSO REAFFIRMS THE POWERS ASSIGNED TO THE MINISTER OF ENERGY AND MINES BY DECREE 1225 OF OCTOBER 21, 1975.

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8. TO DEAL WITH QUESTIONS OF ADDITIONAL SECTORS BEING RESERVED TO NATIONAL COMPANIES, A SPECIAL COMMITTEE IS SET UP, INCLUDING THE MINISTER OF FOREIGN AFFAIRS, FINANCE, DEVELOPMENT, THE CHIEF OF CORDIPLAN, THE MINISTER OF STATE FOR INTERNATIONAL ECONOMIC AFFAIRS AND OTHER MINISTERS, AS APPROPRIATE. THIS COMMITTEE IS EMPOWERED TO STUDY THE QUESTION AND MAKE RECOMMENDATIONS, BUT THE FINAL DECISION RESTS WITH THE COUNCIL OF MINISTERS AND THE PRESIDENT.

9. COMMENT: THE DECREE IS HELPFUL IN LIBERALIZING SOME OF THE MORE RIGID PROVISIONS OF THE ORIGINAL DECREE. BY EXTENDING THE DEADLINE FOR CONVERSION OF FOREIGN FIRMS INTO NATIONAL FIRMS (FROM APRIL 30, 1977 TO DECEMBER 31, 1977) AND BY CLARIFYING TO SOME EXTENT THE POSITION OF SALES SUBSIDIARIES IN VENEZUELA, IT AMELIORATES PROBLEMS WHICH HAVE LONG PLAGUED FOREIGN COMPANIES DOING BUSINESS IN VENEZUELA. A VENEZUELAN-AMERICAN CHAMBER OF COMMERCE OFFICIAL ESTIMATED THAT PERHAPS 1000 FOREIGN FIRMS WILL BE AFFECTED BY THE DECREE. INTERPRETATION OF THE PROVISIONS OF THE NEW DECREE REST WITH SIEX AND THE COURTS, AND IT REMAINS TO BE SEEN HOW LIBERAL SIEX WILL BE IN INTERPRETING THE NEW RULES.

10. WE ARE TOLD WORK ON REVISIONS TO DECREE 63 WILL BE FINISHED BY MARCH.
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Message Attributes

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